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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,675	02/20/2004	Ok-Kyung Cho	1021.43510X00	5533

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

EXAMINER	
MALLARI, PATRICIA C	
ART UNIT	**PAPER NUMBER**
3736	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/781,675	CHO ET AL.	
	Examiner	Art Unit	
	Patricia C. Mallari	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *6-9* is/are allowed.

6)☒ Claim(s) *1-4 and 10* is/are rejected.

7)☒ Claim(s) *5 and 11* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This is a final Office action. No new grounds of rejection have been presented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 4, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,269,314 to Iitawaki et al. in view of US Patent No. 5,924,996 to Cho et al. Iitawaki teaches a blood sugar level measuring apparatus comprising a measuring portion 1 capable of obtaining a plurality of measurement values (col. 3, lines 29-32 and lines 42-47; col. 3, line 65-col. 4, line 6 of Iitawaki). A selecting means 3 allows a patient to select whether she or he is an able-bodied person or a diabetic patient (fig. 6; col. 4, lines 7-10 and lines 42-59; col. 5, lines 5-10; col. 7, lines 29-33 of Iitwaki). A calculation portion 5 calculates a blood sugar level based on the measurement values obtained by the measuring portion 1 and the result of the selection by selecting means 3 (figs. 11 & 14; col. 4, lines 66-col. 5, line 65 of Iitawaki). The measuring portion of Iitawaki relies on measurement values related to light from a light source passing through a portion of the patient's body to estimate blood sugar values, rather than measurement values related to heat measurement and related to a body surface and a measurement environment.

However, Cho teaches a measuring portion for measuring blood sugar values based on heat radiating from a user's skin and a temperature of the environment (col. 6, line 66-col. 7, line 27 of Cho), wherein such measurement values are clearly related to heat measurement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the measuring portion of Cho as that of Iitawaki as it would merely be the substitution of one known means for obtaining blood sugar values for another.

With regard to "selecting means for selecting an able-bodied person or a diabetic patient", this limitation meets the three-prong analysis per MPEP §2181 and thereby invokes 35 U.S.C. 112, 6th paragraph. The corresponding structure set forth by the instant specification appears to be the push buttons 11a, 11d, shown in figure 9 and described on p. 21 of the specification. Iitawaki teaches a selecting means, described as including a key or button unit 31 (fig. 1; col. 4, lines 7-10 of Iitawaki) for use in indicating the patient's diabetic state, or whether the patient has diabetes (fig. 6; col. 4, lines 42-59 of Iitawaki). The key or input button of Iitawaki is considered to be the same as or an equivalent of the push buttons 11a, 11d, since it performs the same function in substantially the same way and produces substantially the same result as the corresponding element in the applicants' specification. See MPEP §2183.

Regarding claim 3, the selecting means 3 comprises an input operating portion 31, 32 provided for the able-bodied person or diabetic patient individually (fig. 1; col. 4, lines 7-11 of Iitawaki). As to the limitation "provided for the able-bodied person or diabetic patient individually" the applicant should note that this is merely intended use

language that cannot be relied upon to define over the prior art since Iitawaki, as modified, teaches all of the claimed elements and their recited relationship. The input operating portion is clearly provided for an individual user, whether the user be an able-bodied person or a diabetic.

Regarding claim 4, a storage portion stores a plurality of regression functions, wherein the calculation portion reads a regression function corresponding to the result of the selection from the storage portion to calculate the blood sugar level (col. 5, lines 11-67 of Iitawaki). While the reference does not explicitly recite the regression function being stored in a storage portion, it is clear that since the calculation portion 5 uses regression functions to calculate the blood sugar distribution data, those functions must inherently be stored in some portion related to the calculation portion so that the calculation portion may use them in order to calculate the blood sugar distribution, as described.

Regarding claim 10, in a method of blood sugar level measuring, the blood sugar level is calculated using the obtained plurality of measurement values and a regression function for either able-bodied persons or diabetic patients chosen based on the obtained type identifying an able-bodied person or diabetic patient (col. 5, lines 58-67 of Iitawaki).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iitawaki in view of Cho, as applied to claims 1, 3, 4, and 10 above, and further in view of US Patent No. 6,322,504 to Krishner. Iitawaki, as modified, is silent as to how the patient is

notified when to input or prompted to select whether he or she is an able-bodied person or diabetic patient. However, Krishner teaches a system wherein a computer system comprising a monitor and a keyboard or other input means is used to prompt a person to select whether he or she is a diabetic patient or an able-bodied person (col. 5, lines 1-20; col. 10, lines 32-34 of Krishner). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the selecting means of Krishner as that of Iitawaki in view of Cho, since Iitawaki, as modified, teaches allowing a person to select whether he or she is a diabetic, and Krishner teaches an appropriate such means for doing so.

Response to Arguments

Applicant's arguments filed 2/7/06 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicants argue that the data calculation shown by Iitawaki et al. is completely different from the present invention. However, claim 1 merely recites "a calculation portion for calculating a blood sugar level based on the plurality of measurement values obtained in the measuring portion and the result of selection by

the selecting means" which Iitawaki, as modified by Cho, describes. The specific details of the data calculation set forth in the specification are not included in the text of claim 1.

The applicants further contend that Iitawaki et al. does not disclose "a selecting means for selecting an able-bodied person or a diabetic patient" and therefore, the base for the calculation is completely different between Iitawaki et al. and the present invention. However, as pointed out in the rejection set forth above and in the previous Office action, Iitawaki indeed describes such a means.

The applicants further remark that Cho does not disclose an apparatus including selecting means or a calculation portion. As explained in the rejection set forth above and in the previous Office action, the Cho reference is merely relied upon to show a measurement portion for obtaining a plurality of measurement values relate to a body surface and a measurement environment, including at least a measurement value related to heat measurement, which Cho indeed describes. Furthermore, the applicants state that the combination of Cho with Iitawaki would not result in the invention of claim 1, but fail to explain why apart from the arguments addressed above. The above rejection sets forth why the combination of Cho with Iitawaki *would* result in the invention of claims 1, 3, 4, and 10. Therefore, the rejection of claims 1, 3, 4, and 10 under 35 U.S.C. 103(a) as being unpatentable over Iitawaki in view of Cho stands.

With regard to the Krishner reference, the applicants argue that there is no suggestion to use the entered diabetic status for measuring blood sugar level. The above rejection does not imply that Krishner contains such a rejection. Iitawaki in view of Cho suggests obtaining a diabetic status from a user using an input button and

Krishner is merely relied upon to show in more detail how such a button may be used to obtain the patient's diabetic status. The applicants do not dispute that Krishner shows a selecting means for selecting an able-bodied person or a diabetic patient. Therefore, the rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Iitawaki in view of Cho and Krishner stands.

Allowable Subject Matter

Claims 6-9 are allowed. The allowability of claims 6-9 was addressed in a previous Office action filed 3/23/05.

Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The allowability of claims 5 and 11 was addressed in a previous Office action filed 3/23/05.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (571) 272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Mallari
Patent Examiner
Art Unit 3736

ROBERT L. NASSER
PRIMARY EXAMINER